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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,001	06/24/2003	C. Paul Cox	P-137 / TEP0237-01	1629
832	7590	12/21/2006	EXAMINER	
BAKER & DANIELS LLP 111 E. WAYNE STREET SUITE 800 FORT WAYNE, IN 46802			FREAY, CHARLES GRANT	
			ART UNIT	PAPER NUMBER
			3746	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	12/21/2006	PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/603,001	COX ET AL.
Examiner	Art Unit	
Charles G. Freay	3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 27 October 2006.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 13-16 is/are allowed.

6)  Claim(s) 1-12 and 17-21 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_  
  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

This office action is in response to the Request for Continued Examination of October 27, 2006 and the amendment included therewith.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 and 17-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims have been amended to refer to a "stand-alone pump". It is unclear what is meant by "stand-alone". The specification provides no clear description of this term. Care must be taken so that no new matter is added into the claim. The examiner notes that since the Ohashi et al and Aoi et al references are integral pump assemblies having a single input and are not used as part of a series of pump assemblies then the pumps disclosed therein are stand-alone.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 7 and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Ohashi et al (USPN 6,487,856).

Ohashi et al disclose a stand-alone hydrostatic pump comprising a pump housing (120, in Fig. 3) and endcaps (130a, 130b). The endcaps are shown in Figs. 7 and 8 and include a pair of system passages (131), each system passage being connected to the hydrostatic pump (note the kidney openings at the center of the figures), and each system passage is fluidly connected to a pair of system ports (the openings at the opposite ends of the passages) in an exterior of the endcap housing. Further there are plugs (161) which close the ends of the passages. As clearly shown at least the lower illustrated port of the passages is configured to convey operating fluid between the pump and a motor. The examiner notes that the limitation "configured to convey..." sets forth an intended use. The other ends of the passages also have port openings. These openings are configured to convey the operating fluid between the pump and a motor since they are capable of receiving a fluid line to a motor if the valve were removed.

Claims 1, 7 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Aoi et al (USPN 4,962,675).

Aoi et al disclose a stand-alone hydrostatic pump comprising a pump housing (84) and an endcap (85). The endcap is shown in Figs. 7 and 8 and include a pair of system passages (101, 102), each system passage being connected to the hydrostatic pump (104, 105), and each system passage is fluidly connected to a pair of system ports (the openings at the opposite ends of the passages) in an exterior of the endcap

housing. Further there are plugs (103) which close the ends of the passages. The passages are configured to convey operating fluid between the pump and a motor. The examiner notes that the limitation "configured to convey..." sets forth an intended use. The ends of the passages have plugs mounted therein. These openings are configured to convey the operating fluid between the pump and a motor since they are capable of receiving a fluid line to a motor if the plug were removed.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over either of Okada et al Aoi et al as set forth in the Rejections of March 3 and July 27, 2006. In the March 3, 2006 rejection the examiner gave official notice that the use of case drains as claimed was well known. The applicants failure to traverse this position is taken as an admission that the case drains are well known in the art.

***Allowable Subject Matter***

Claims 13-16 are allowed.

Claims 2-6, 8-12 and 20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed October 27, 2006 have been fully considered but they are not persuasive. The applicant argues against each of the Ohashi et al and Aoi et al references stating that they do not anticipate the claims because they do not disclose that the ports are "configured to convey operating fluid between the stand-alone hydrostatic pump and a separate hydrostatic motor". The applicant argues that in Ohashi et al the ports have check valves mounted therein and Ohashi et al does not suggest removing them. Further, with regards to Aoi et al applicant argues that passages convey fluid within a transmission not between a stand-alone pump and a separate motor. The applicant argues that Aoi et al discloses plugs which if removed would depressurize the system.

The examiner disagrees with these arguments. First, it is noted that the only limitation placed on the system ports is that they are capable of conveying fluid to a separate motor. All of the ports shown at the ends of the system passages are capable of conveying fluid to a separate motor. The only thing a port has to do to be capable of conveying fluid is be capable of receiving a fluid line to transport the fluid. All of the noted ports of Ohashi et al and Aoi et al are capable of receiving lines and are thus configured to convey fluid to a separate motor. Second, it is important to note that a separate motor has not been claimed. Merely the capability to deliver fluid from a port to a motor. Thirdly, with regards to the applicant's arguments that Aoi et al discloses a motor within/communicating within the system passages already, the examiner notes that this does not negate the fact that the ports at the ends of the passages are

configured to or capable of conveying fluid to a separate motor. Fourth, with regards to the applicant's arguments that if the check valves or plugs were removed then the systems would be depressurized and the system would be inoperable. The examiner notes that the same can be said of the applicant's device. For the pump of the current application to be operable, a plug or some other member must close the ports which are not conveying system fluid (note paragraph [0052]).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571-272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Charles G Freay  
Primary Examiner  
Art Unit 3746

CGF  
December 6, 2006